IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.RAMACHANDRAN
&
THE HONOURABLE MR. JUSTICE A.K.BASHEER

MONDAY, THE 18TH DECEMBER 2006 / 27TH AGRAHAYANA 1928

WP(C).No. 26649 of 2006(S)

PETITIONER:

ABDUL SATHAR HAJEE MOOSA SAIT,
DHARMASTHAPANAM, A WAKF REGISTERED BEFORE THE KERALA WAKF BOARD WITH REGISTER NO.A2-3300/RA, HAVING ITS OFFICE AT CHITTOOR ROAD, PULLEPPADY, NOW AT ARANGATH ROAD,COCHIN-18, REPRESENTED BY THE MANAGING TRUSTEE, ADAM ABOOBACKER SAIT.

BY ADV. SRI.P.S.USUPH
SRI.P.U.ZIYAD

RESPONDENTS:
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1. KERALA WAKF BOARD, WITH ITS OFFICE AT PARAMARA ROAD, NOW AT V.I.P. ROAD, NEAR JAWAHARLAL NEHRU INTERNATIONAL STADIUM, KOCHI-17, REPRESENTED BY THE CHIEF EXECUTIVE OFFICER (SECRETARY).

2. CHIEF EXECUTIVE OFFICER, KERALA WAKF BOARD, DO.DO.

3. A.HABEEB, WAKF INSPECTOR, KERALA WAKF BOARD, DO.DO.

4. STATE OF KERALA, REPRESENTED BY CHIEF SECRETARY, SECRETARIAT THIRUVANANTHAPURAM.

BY ADV. SRI.P.A.ABDUL JABBAR, SC, WAKF BOARD

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 18/12/2006,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS EXHIBITS:

EXT.P1: COPY OF THE WAKF DEED DATED 19.5.1099 M.E.

EXT.P2: COPY OF ORDER NO.A2-3300/RA DATED 30.10.2002.

EXT.P3: COPY OF LETTER COMMUNICATING THE TRUST BOARD DECISION DATED 25.1.2003.

EXT.P4: COPY OF ORDER DATED 15.2.2003 NO.A2-3300/RA OF THE 2ND RESPONDENT.

EXT.P5: COPY OF JUDGMENT DATED 16.12.2003 IN W.P.C.38466/2003.

EXT.P6: COPY OF JUDGMENT DATED 9.8.2005 IN W.P.C.19161/2004.

EXT.P7: COPY OF ORDER NO.A2/3300/RA DATED 23.11.2005.

EXT.P8: COPY OF LETTER DATED 27.1.2006 TO S.B.T, M.G. ROAD BRANCH, ERNAKULAM.

EXT.P9: COPY OF LETTER DATED 22.2.2006 SENT BY MANAGING TRUSTEE TO THE 2ND RESPONDENT.

EXT.P10: COPY OF LETTER DATED 30.1.2006 SENT BY MANAGING TRUSTEE TO THE 2ND RESPONDENT.

EXT.P11: COPY OF PETITION DATED 14.6.2006 SUBMITTED BY THE MANAGING TRUSTEE BY THE 1ST RESPONDENT.

EXT.P12: COPY OF ORDER DATED 1.8.2006 PASSED BY THE 1ST RESPONDENT.

TRUE COPY

P.A.TO JUDGE

M.RAMACHANDRAN & A.K.BASHEER,JJ

W.P.(C) No.26649 OF 2006

DATED THIS THE 18TH DECEMBER, 2006

JUDGMENT

A.K.BASHEER,J

Abdul Sathar Hajee Moosa Sait Trust, is admittedly a Wakf created by late Abdul Sathar Hajee Moosa Sait. This Writ Petition is filed by its Manging Trustee praying for issuance of a Writ of Certiorari to quash Ext.P7 proceedings of Respondent No.2, the Chief Executive Officer of Kerala State Wakf Board, Kochi and for other incidental reliefs. By judgment dated August 9, 2005 in Writ Petition No.19161 of 2004, a copy of which is on record as Ext.P6, this court had directed respondent No.2 herein, to handover charge of the Trust to the petitioner in this Writ Petition (who was respondent no.4 in Ext.P6), if it was found that election to the Trust had been held in a proper manner. It is the admitted position that the management of the trust had been handed over to the petitioner as directed by this court. But the grievance of the petitioner is that respondent No.2 has imposed certain untenable conditions while handing over the management. Ext.P7 is the true photocopy of the proceedings issued by the 2nd respondent in this regard.

2. It is contended by the petitioner that the conditions imposed by the Chief Executive Officer of the Wakf Board would hamper and strangulate the functioning of the Trust. Similarly the directions issued by respondent no.2 in Ext.P12 communication will also cause irreparable injury and hardship to the Trust. Though the petitioner had pointed out the administrative and technical difficulties in managing the affairs of the Trust because of the conditions imposed in Ext.P7, the Wakf Board had not considered those aspects of the matter in their proper perspective. Learned counsel invites our attention to Exts.P9 and P10 communications sent by the petitioner to respondent no.2 in this regard. Our attention is also invited to Ext.P11 petition filed by the petitioner before the Wakf Board. It was in response to Ext.P11 that the Wakf Board had issued Ext.P12 communication, more or less rejecting the request made by the petitioner.

3. Undoubtedly the Wakf Board can issue necessary directions to the person in charge of a Wakf property if the situation so demands. A perusal of Exts.P7 and P12 undoubtedly shows that the Wakf Board had exceeded its jurisdiction while exercising the power vested in it. In our view the Board could not have imposed the conditions contained in Ext.P7 and P12 without affording sufficient opportunity to the

petitioner to be heard. The grievance ventilated by the petitioner ought to have been properly appreciated. The administration of the trust should never be strangulated or put in jeopardy. The trustees are entitled to administer the trust in terms of the clauses contained in the trust deed. The Wakf Board can of course step in it if the administration of the trust has collapsed or if there is any threat that the Wakf properties are in danger of being destroyed or damaged or interests of the Board are likely to be adversely affected. It is true that the former managing trustee was placed under suspension on the basis of certain allegations of corruption raised against him. The Board had intervened at that time at the request of the trustees themselves, and the administration was taken over by the Board. An interim mutawalli appointed by the board had been in charge of the administration of the trust till it was handed over to the petitioner as directed by this court in Ext.P6 judgment. The mere fact that there existed some problem in the administration of the trust because of the alleged misdeeds of the former Managing trustee need not necessarily mean that the Board should be allowed to meddle with the administration of the Trust without any justifiable reasons. The board is of course entitled to use its machinery to scrutinize the peiodical reports and accounts that may be submitted by the Trust as prescribed

under the Act and the Rules. If there are any discrepancies or acts of mismanagement in the administration of the Trust, it will be open to the Board to intervene; otherwise the trustees should be allowed to administer the Trust. No materials have been placed before us to show that there is mismanagement in the affairs of the trust or that the Wakf properties are likely to be misused. No compelling circumstance warranting interference of the Board has been brought to our notice. The Board cannot assume that the Trustees will not manage the affairs of the Trust in a proper manner and try to impose restrictive conditions on the trustees simply for the reason that its former Managing Trustee had been charged with imputation of corruption. In that view of the matter Exts.P7 and P12 are liable to be quashed. We do so.

4. We hasten to add that we have not considered the merit of the contentions raised by the petitioner exhaustively. The view expressed by us is only our prima facie impression.

5. The Writ Petition is disposed of with a direction to respondents 1 to 3 to return the fixed deposit receipts representing the sale proceeds to the petitioner. If any bank account of the petitioner has been freezed, appropriate orders shall be issued de-freezing those accounts. The interest that has accrued on the fixed deposit shall also be released to the petitioner forthwith. We make it

clear that it will be open to the Wakf Board to take appropriate action against the petitioner in accordance with law if there is any allegation of malfeasance and misfeasance in the administration of the Trust. This shall be done only after due notice and also after affording sufficient opportunity to the petitioner to be heard.

M.RAMACHANDRAN,JUDGE

A.K.BASHEER,JUDGE

dvs